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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205786
Party	Defendant Martin Anton Groder
Correspondence Address	DIANNE SMITH-MISEMER HOVEY WILLIAMS LLP 10801 MASTIN BLVD , SUITE 1000 OVERLAND PARK, KS 66210 UNITED STATES tmdocketing.misemer@hovewilliams.com, litigation@hovewilliams.com
Submission	Answer
Filer's Name	Dianne M. Smith-Misemer
Filer's e-mail	tmdocketing.misemer@hovewilliams.com, litigation@hovewilliams.com
Signature	/Dianne M. Smith-Misemer/
Date	11/05/2012
Attachments	Answer to Notice of Opposition.pdf ( 5 pages )(15099 bytes )

**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of	)	
Serial No. 79/089,902	)	
	)	
<b>DIAGEO NORTH AMERICA, INC.</b>	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91205786
	)	
<b>MARTIN ANTON GRODER</b>	)	
	)	
Applicant.	)	

**ANSWER TO NOTICE OF OPPOSITION**

Applicant, Martin Anton Groder (“Applicant”) by and through its attorneys, submits his Answer and Affirmative Defenses to oppose Diageo North America’s Notice of Opposition and states as follows:

1. Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 1 and therefore denies the same.
2. Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 2 and therefore denies the same.
3. Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 3 and therefore denies the same.
4. Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 4 and therefore denies the same.
5. Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 5 and therefore denies the same.

6. Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 6 and therefore denies the same.

7. Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 7 and therefore denies the same. Applicant further states that the public records of the United States Patent & Trademark Office (“USPTO”) speak for themselves.

8. Applicant admits the allegations set forth in paragraph 8.

9. Applicant admits the allegations set forth in paragraph 9 and further states that the public records of the USPTO speak for themselves.

10. Applicant denies the allegations set forth in paragraph 10.

11. Applicant admits that the goods covered in International Class 33 may be related to Opposer’s goods but that the overall differences between Applicant’s ROX mark and Opposer’s CÎROC and RÖKK marks render them readily distinguishable visually, aurally, and in terms of commercial impression and connotation, thereby negating any likelihood of confusion among them.

12. Applicant lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraph 12 and therefore denies the same.

13. Applicant denies the allegations set forth in paragraph 13.

14. Applicant denies the allegations set forth in paragraph 14.

15. Applicant denies the allegations set forth in paragraph 15.

16. Applicant denies the allegations set forth in paragraph 16.

### **AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief can be granted and, in particular, fails to state legally sufficient grounds for sustaining the opposition.
2. Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposer's beverage products, nor will such use be thought by the public to be used by Opposer with Opposer's authorization or approval.
3. Applicant's mark in its entirety is sufficiently distinctive from Opposer's mark so as to avoid confusion, deception, or mistake as to the source of sponsorship or association of Applicant's services.
4. Applicant's mark, when used with Applicant's products, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's products by Opposer.
5. Applicant reserves its right to assert additional affirmative defenses as it may be determined through discovery.

WHEREFORE, Applicant prays that this Opposition be dismissed with prejudice and that Application Ser. No. 79/089,902 be passed to allowance.

Respectfully submitted,

Dated: November 5, 2012

By: /s/ Dianne M. Smith-Misemer  
Dianne M. Smith-Misemer  
HOVEY WILLIAMS LLP  
10801 Mastin Boulevard, Suite 1000  
Corporate Woods, Building 84  
Overland Park, Kansas 66201  
Tel. No. 913-232-5011  
Fax. No. 913-647-9057

*Attorneys for Applicant Martin Anton Groder*

**CERTIFICATE OF FILING**

I hereby certify that the foregoing Answer to the Notice of Opposition regarding Ser. No. 79/089,902 is being electronically filed with the United States Patent and Trademark Office – Trademark Trial and Appeal Board.

November 5, 2012

/s/ Dianne M. Smith-Misemer

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION to be served upon:

Evan Gourvitz  
Diageo North America, Inc.  
801 Main Avenue  
Norwalk, Connecticut 06851

by placing same in an envelope, properly sealed and addressed, with postage prepaid and depositing same with the United States Postal Service on this 5<sup>th</sup> day of November, 2012.

/s/ Dianne M. Smith-Misemer  
Dianne M. Smith-Misemer